Supreme Court, U.S.
FILED

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No.

In The

Supreme Court of the United States

October Term, 1996

YIQUN GUO,

Petitioner,

v.

RYLAND GROUP, INC., et al,

Respondents.

On petitions for a writ of certiorari
To The United States Court of Appeals for the Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

YIQUN GUO
Pro se
343 West Side Dr. #203
Gaithersburg, MD 20878-3033
301-963-6531 (H)
301-881-8840 ex 3360 (O)

59 pp

QUESTIONS PRESENTED

1. Is summary judgment appropriate where there are complete disputes of all genuine issues as to the material facts?
2. Does a person have the right to state his position in a hearing when he is alleged for poor job performance?

LIST OF PARTIES

ARLENE MALECH, Respondent who has same counsel as Ryland Group, Inc.

DOUGLAS TOWNSEND, Respondent who has same counsel as Ryland Group, Inc.

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PETITION FOR A WRIT OF CERTIORARI

Yiqun Guo respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

"There is no reasonable cause to believe discrimination occurred on the basis of national origin", Office of Human Rights, Howard County, MD, herein after OHRHC.

"Not to hear the appeal", Human Rights Commission, Howard County, MD, herein after HRCHC.

"The evidence obtained during the investigation does not establish a violation of the statute", Equal Employment Opportunity Commission, Baltimore District Office, MD, herein after EEOCBD.

"Defendant's motion for summary judgment is granted; and judgment is entered in favor of defendant against plaintiff", U.S. District Court, MD, herein after District Court.

"Find no reversible error... affirm on the reasoning of the district court", and "dispense with oral argument", U.S. Court of Appeals for the Fourth Circuit, herein after 4th Circuit Court.

"The petition for rehearing and suggestion for rehearing in banc are denied", 4th Circuit Court.

JURISDICTION

The date on which the U.S. 4th Circuit Court decided my case was December 2, 1996. A timely petition for rehearing was denied by 4th Circuit Court on January 21, 1997, and a copy of the order denying rehearing appears at Appendix F. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Federal Rules of Civil Procedure: Rule 56. Summary Judgment

(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

Anderson v. Liberty Lobby, Inc., 477 U.S. 248-249 (1986):

To defeat a motion for summary judgment, the non-moving party must show that there is a dispute over facts that are material to the outcome of the case.

STATEMENT OF THE CASE

Petitioner, an Asian born in China, was hired by Ryland Group, Inc., (respondent), on Sept. 21, 1992, as a Programmer Analyst/Support Marketing Research. The job was posted in Washington Post on May 10, 1992. Petitioner reported to Terry Rose and Bill Ballweber from September 1992 to January 1993, and reported to George Tresnak and Douglas Townsend, vice president of Ryland, from January 1993 to May 1993. Petitioner got very good new employee appraisal and his salary was increased $3,000. His manager, George Tresnak, states "performance is excellent".

In late January, 1993, Dr. Arlene Malech was hired by Ryland and soon became the Director of Customer Satisfaction Programs on Feb. 8, 1993. She also reported to George Tresnak and Douglas Townsend. Petitioner was the only one providing statistics and programming service for her marketing research needs. Although Dr. Arlene Malech often created difficulties in petitioner's work and often screamed at petitioner, there is no dispute that petitioner provided excellent service to her. Petitioner also had a number of opportunities working with two subcontractors of Ryland, Charles Riter and Barbara Bridge, and without hearing any problems.

On May 10 Mr. Douglas Townsend, petitioner's second level manager, forced petitioner to report to Dr. Arlene Malech in spite of petitioner explained once again that he had hard time to work for her. In order to terminate petitioner, Douglas Townsend told petitioner that his job was closed and he was doing "new" job for Dr. Arlene Malech. Knowing Ryland always gave several months to the employees whose jobs were closed to look for new jobs, Douglas Townsend did not give petitioner this option even if petitioner did not want to report Dr. Arlene Malech.

The "new" job was the exact the same as petitioner's old job except petitioner changed title and was forced to report to a bad manager. No Employee Status change form was made regarding to this "new" job and in Ryland employee data base petitioner's title is still Programmer Analyst. In spite that petitioner tried his best to meet her ridiculous demands even voluntarily worked in evenings and on holiday, Dr. Malech was still not satisfied. She tried her best to create most difficult working environment to petitioner. She constantly changed her requests and complained petitioner delayed projects. She gave petitioner unrealistic deadlines and forced petitioner to provide the results every day. She ordered petitioner not to work on other's project and complained petitioner delayed other's project. She often screamed at petitioner and intentionally insulted petitioner in public. As soon as she knew petitioner would report to her, Dr. Arlene Malech started to prepare the materials for

terminating petitioner even **before** petitioner formally reported to her.

On June 4, 1993, after 3 weeks petitioner reported to Dr. Arlene Malech, Douglas Townsend informed petitioner that he was terminated. Douglas Townsend showed him a memo about petitioner's job performance prepared by Dr. Arlene Malech and forced him to leave in fifteen minutes.

There are only four allegations against petitioner for his job performance.

1. Petitioner provided Dr. Arlene Malech the results of five regions instead of one and corrected it later.
2. Petitioner made a suggestion to an outside contractor, Jose Roig, and told him to verify it from Dr. Arlene Malech.
3. Another outside contractor, Barbara Bridge, felt being insulted by petitioner because petitioner was ordered by Dr. Arlene Malech to check Barbara Bridge's survey screen.
4. Another outside contractor, Charles Riter, complained that his project was delayed by petitioner who was ordered by Dr. Arlene Malech not to work on it.

All the job type information stated in the memo against petitioner fall within the job description posted in Washington Post on May 10, 1992 for which petitioner was originally hired. Petitioner was terminated without given any chance to explain Dr. Arlene Malech's allegations, without leaving interview and without signing any termination paper. Petitioner was terminated without notice and without any compensation. June 4, 1993, was Friday. Petitioner's last pay day was the same day. Respondent even did not pay petitioner the Saturday and the Sunday of the week which were none-working days. All of other terminated employees had severance pay regardless the reasons of the terminations. No one was required to leave in 15 minutes. Petitioner was treated substantially different from any other non-Asian employees.

On June 14, 1993, petitioner sent a letter to Roger Schipke, then CEO of Ryland, and Douglas Townsend separately. In the letter petitioner denied every allegation from Dr. Arlene Malech and requested respondent to correct the errors. Respondent never responses to it. Petitioner, therefore, filed a complaint in OHRHC.

After petitioner filed the complaint about the discrimination, petitioner applied for unemployment compensation in the State of MD, the Dept. of Economic and Employment Development. Respondent, however, appealed to the department saying that petitioner was discharged or suspended as a result of poor work performance and "misconduct". It tried to reject petitioner's unemployment benefits and to create more difficulties in petitioner's life.

After petitioner was terminated, Ryland hired a white employee, Jeff Lochte, who performed petitioner's responsibilities as a programmer. Jeff Lochte was a college intern and had comparable but poorer qualifications.

On September 29, 1993, the investigator, Dr. Robert Coggins, from OHRHC met with petitioner after received respondent's overdue response and two statements printed on Barbara Bridge and Charles Riter's stationary. None of them had any signature. After read those documents, Dr. Coggins told respondent that there was not doubt that petitioner was a good employee and Dr. Arlene Malech was a bad manager. He then met with Dr. Arlene Malech, George Tresnak, and Douglas Townsend, and made a call to Barbara Bridge. It was all the investigation he made and he did not even spoke to Jose Roig and Charles Riter. No hearing was made. The latest initial interrogatories was made in October 1993 while the findings were issued in July 1994. The findings are legally expired according to Howard County Code. The findings, however, allegedly found that petitioner "disagreed and argued with Ms. Malech", Appendix E, Part IV. FACTS RELIED ON, #7, which does not even show in above allegations prepared by Dr. Arlene

Malech. The findings also allegedly found that two Ryland employees, "X" and "Z", were "ordered to leave ... immediately after their termination", Appendix E, Results of Investigation Number 1. Respondent was required by OHRHC to provide the personal files of terminated employees. In the documents obtained from EEOCBD, which contain all the OHRHC documents, however, there is no any those personal file. Until today Ryland has not provided any employee, other than petitioner, who was ordered to leave immediately after his termination.

On July 31, 1994, petitioner filed the appeal to Howard County Human Rights Commission and was denied for no specific reason. Appendix D.

On Nov. 21, 1994, petitioner filed appeal to EEOCBD and was denied for no specific reason. Appendix C.

On May 2, 1995, petitioner filed Complaint for Relief from Employment Discrimination in U.S. District Court, MD.

On November 30, 1995, respondent filed a motion for summary judgment. Petitioner filed a timely Opposition to it and attached a Affidavit which clearly indicates a major material dispute that the alleged two jobs were "substantially the same", Appendix I, #11. Without a hearing, the District Court issued the order with a memorandum granting respondent's motion for summary judgment against petitioner. Appendix B.

There are six reasons stated in the memorandum. Petitioner completely disagrees with all the reasons given. He filed an appeal supported by overwhelmingly undisputed evidence to the 4th Circuit Court. Petitioner completely refuted all the reasons given by District Court in his brief. On December 2, 1996, 4th Circuit Court issued unpublished opinions that do not point out any petitioner's argument is wrong and affirm District Court decision without a hearing. Appendix A.

Petitioner filed timely petition for rehearing and rehearing in banc, Appendix H., but was denied again for no specific reason. Appendix F.

REASONS FOR GRANTING THE PETITION

Petitioner, an excellent employee, received slave-like working condition in Ryland. Appendix H. On his arriving Marketing Group, his welcoming memo was canceled while all other people there got welcoming memo. He was forced to report to a bad manager. He was constantly screamed by Dr. Malech. He was insulted in public. He was imposed unrealistic deadline. He was alleged that he did poor job performance and was not given any chance to explain. He was force to leave in fifteen minutes and was escorted out of the office. He was not placed in a probation. He was not given any severance pay even was not given the salary for Saturday and Sunday in the week he was terminated, which were none working days and he had worked full week. Further more, after he applied unemployment benefits, respondent appealed his benefits in order to create more difficulties in his life. After he filed a complaint in the OHRHC, he was further defamed that he "did not want to work for a woman" and that he "was caught trying to remove certain Ryland property". Petitioner has spent nearly 4 years and cost more than $53,000 money in this case but has NEVER get a single hearing in this 100 percent disputed case. Rather, he is punished more than $3,500 for the costs. Because respondent committed perjury, petitioner did not receive any relief from respondent's unlawful employment practice. Rather, he further greatly suffered from financial loss and back pain. He is receiving medical treatments three times a week and can not get any improvement because he is suffering from greatly mental damages.

It is clear that this case was determined by complete errors. Appendix H. One can easily tell it by reviewing respondent's self-contradictory logic without even looking into any evidence. For example, respondent allege that petitioner insulted Barbara Bridge because petitioner asked her to provide new data and inferred her

data is not usable. On the other hand, respondent alleges petitioner did poor job because Charles Riter complained that petitioner provided him some report with wrong format. Respondent does not complain Charles Riter insulted petitioner. Rather, it complains petitioner even without verifying whether petitioner provided correct format. Those two allegations even do not match Dr. Arlene Malech's four allegations listed in the Statement of the Case.

The major argument that respondent gave in this case is that petitioner's original job in Ryland as a Programmer Analyst support Marketing Research was closed and he was given a new job by Dr. Malech. Based on this argument, respondent argues that petitioner was terminated because he was not qualified for the new job, and that there is no reasonable cause of discrimination because same person hired and filed petitioner. The District Court also concluded that that the same person hired and filed petitioner "gives rise to the inference of a lack of unlawful discrimination" and made it as the number 1 reason listed. Appendix B. Clearly whether the alleged two jobs are the same is a genuine issue as to a material fact which will strongly influence to the outcome of the case. Petitioner has submitted an affidavit to the District Court which states that the alleged two jobs were "substantially the same", Appendix I, #11. In his Brief to the 4th Circuit Court, petitioner further proved that his original job was not closed from the fact that Dr. Malech's job had no change and he was the only one supported her research needs before and after reported to her, that the reason eliminating his old job was self-contradictory, that all the job type information stated in the memo against him fall within his old job description, that all the allegations about his job performance are either ridiculous or defamatory, that his replacement after his termination in Ryland was still doing the same job as his old job. Part II and III, Appendix H. By law, the courts should have denied respondent's summary judgment simply by petitioner's affidavit or Brief. Federal Rules of Civil Procedure: Rule 56 (c); Anderson v. Liberty Lobby, Inc., 477 U.S. 248-249 (1986).

The important is not only this case was entered by complete errors but also the way this case had been carrying out. As presented in the Statement of the Case, this case has never been heard for the whole course of the case from Ryland, OHRHC to 4th Circuit Court. It is clearly unjustified. It is the fundamental for a legal system that a person shall have the right to state his position in a hearing when there is a dispute on material fact. It is the basic human rights that a person shall have the right to state his position in a hearing when he is alleged for poor job performance. Having some income, petitioner has better position than some of poorer people. Petitioner, who has spent over four years and cost more than $53,000 money in this case, who strictly follows the legal channel to seek the relief from unlawful discrimination, did not even get a single hearing in this 100 percent disputed case. The Court can image what is happening for other poorer people. As fully proven in petitioner's brief in his appeal, all the major witnesses have committed perjury. Respondent has also committed perjury by providing false job description and false deposition material to the courts. Why the one being punished by law is petitioner rather than those perjurers? The function of the legal system is to provide justice for people to resolve conflict rather than to use its power to punish the weak party and to help the party having strong background regardless the facts and justice. People have been concerning violence all the time. If a country can not provide a legal channel for people to use, what other choices they have? United States declares having the best human rights in the world. It, therefore, shall not allow an excellent employee to receive slave-like treatments and to be punished by injustice.

CONCLUSION

As clearly presented in this petition, this case is not simply some unfair treatments against petitioner nor simply some errors in application of laws. Rather it is whether everyone is the same in front of a law. Petitioner is suffering from a serious discrimination with serious defamation and was refused by all the administrative agents and the courts without any chance of a hearing. Large number of people have engaged illegal activities. Petitioner strongly urge the

Honorable Supreme Court to take serious consideration of this case and to have a review of this case which has completely reversal results, for all the people who suffered from discriminatory treatments, for the dignity of the law, and for the well-being of the country.

Respectfully Submitted,

Yiqun Guo
343 West Side Dr. #203
Gaithersburg, MD 20878-3033
Petitioner - pro se

Appendix A

APPENDIX A.-- Unpublished Opinions of the U.S. Fourth Circuit Court
Filed December 2, 1996

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 96-1388

YIQUN GUO, Plaintiff - Appellant,
versus

THE RYLAND GROUP, INCORPORATED, Defendant - Appellee,
and
ARLENE MALECH; DOUGLAS TOWNSEND, Defendants.

Appeal from the United States District Court for the District of Maryland, at Greenbelt. J. Frederick Motz, Chief District Judge. (CA-95-1319-JFM)

Submitted: November 21, 1996 Decided: December 2, 1996

Before HALL, WILKINS, and HAMILTON, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Yiqun Guo, Appellant Pro se. Richard J. Hafets, Eric Paltell, Sonya Kazazian Hannan, PIPER & MARBURY, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Appendix A

Appellant appeals the district court's order granting Defendant's motion for summary judgment in this employment discrimination action. We have reviewed the record and the district court's opinion and find no reversible error. Accordingly, we affirm on the reasoning of the district court. Guo v. Ryland Group Inc., No. CA-95-1319-JFM (D. Md. Feb. 26, 1996). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

Appendix B

APPENDIX B. -- the Order and the Memorandum of the U.S. District Court, Maryland Filed February 26, 1996

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Civil No. JFM-95-1319

YIQUN GUO
v.
RYLAND GROUP, INC.

ORDER

For the reasons stated in the memorandum entered herewith, it is, this 26th day of February, 1996,

ORDERED:

1. Defendant's motion for summary judgment is granted; and
2. Judgment is entered in favor of defendant against plaintiff.

s/ J. Frederick Motz
J. Frederick Motz
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Civil No. JFM-95-1319

YIQUN GUO
v.
RYLAND GROUP, INC.

MEMORANDUM

Appendix B

Plaintiff has brought this suit against his former employer, The Ryland Group, Inc. ("Ryland"), alleging that his employment was terminated because of his race (Asian) and national origin (Chinese) under Title VII of the Civil Rights Act of 1964. Discovery has been completed, and defendant has moved for summary judgment. The motion will be granted.

The issues are so clear cut that I will simply succinctly state the reasons for my decision.

1. It was the same person (Dr. Arlene Malech) who hired plaintiff in the Customer Satisfaction Research Analyst ("CSRA") position and who terminated his employment. Under Fourth Circuit law this fact gives rise to the inference of a lack of unlawful discrimination. See Proud v. Stone, 945 F.2d 796 (4th Cir. 1991). [1]

2. It is clear that plaintiff was not meeting Dr. Malech's legitimate expectations in the CSRA position- Within three weeks on the job he directly violated her instructions in connection with the request for data on the Southeast Region project and in connection with the Customer Satisfaction Baseline Survey project. He also alienated two representatives of outside vendors with whom Dr. Malech had to deal on a regular basis.

3. There is no question that the CSRA position was substantially different from the former position that plaintiff held. Indeed, plaintiff has admitted that because of the difference in the jobs he was not qualified for the CSRA position. The mere fact that a "status change" form was not prepared for plaintiff before his

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[1] The fact that plaintiff was originally hired at Ryland in January 1993, for a position different from the CSRA position by persons other than Dr. Malech is immaterial. It is undisputed that plaintiff's former position was abolished for nondiscriminatory reasons and that plaintiff was not let go at that time because Dr. Malech took him on (despite her misgivings about his qualifications) in the CSRA position.

employment was terminated is irrelevant. The record establishes that it is not uncommon for there to be several months' lag time between a change in position and the completion of a status change form if, as here, the change in position does not involve any change in the employee's compensation or in budgeting projections.

4. Plaintiff has not proven, as he is required to do in order to make out his prima facie case, that he was replaced by someone with comparable qualifications. The record is uncontradicted that Lori Winokur had a background in marketing and marketing research and was therefore more highly qualified for the CSRA position than was plaintiff.

5. Plaintiff has not proven that he was treated differently from similarly situated employees who are of a different race or country of origin, in regard to either the probation issue or the severance pay issue. The supervisors who made the decision on both issues as to employees other than plaintiff were persons other than Dr. Malech. Furthermore, in regard to the probation issue, the record is clear that not all employees are placed on probation but only those whom the supervisors believe can improve his or her performance if given the opportunity to do so. In light of plaintiff's extremely poor performance in the few weeks that he served in the CSRA position, Dr. Malech could certainly have reasonably concluded that no useful purpose would be served by placing him on probation. Likewise, the persons with whom plaintiff compares himself in regard to the severance pay issue were supervisory employees, and plaintiff has not contradicted defendant's evidence that non-supervisory employees, like plaintiff, who have been employed with Ryland for less than one year are not given severance pay upon the termination of their employment.

6. As to plaintiff's complaint that he was escorted out of the office on the day that he employment was terminated while other persons of different races or countries of origin have not been, the evidence is uncontradicted that the reason that this occurred was that

plaintiff had asked three times to take proprietary computer programs with him.

A separate order granting Ryland's motion is being entered herewith.

Date: February 26, 1996
s/ J. Frederick Motz
J. Frederick Motz
United States District Judge

Appendix C

APPENDIX C. -- Decision of No Violation of the Statute, Equal Employment Opportunity Commission, Baltimore District Office, Maryland
Filed February 3, 1995

Equal Employment Opportunity commission
Baltimore District Office
10 South Howard Street Third Floor
Baltimore, MD 21201

EEOC No 12E930066

Charging Party

Yiqun Guo
12264 H GREEN MEADOW DRIVE
COLUMBIA, MD 21044

Respondent

THE RYLAND GROUP, INC.
11000 BROKENLAND PARKWAY
COLUMBIA, MD 21044

DETERMINATION

Under the authority vested in me by the Commission, I issue the following determination as to the merits of the subject charge.

Respondent is an employer within the meaning Of Title VII and the timeliness, deferral and all other Jurisdictional requirements have been met. Substantial weight has been accorded to the findings Of the Office of Human Rights Howard Cnty.

I have determined that the evidence obtained during the investigation not establish a violation Of the statute.

Appendix C

This determination concludes EEOC's processing of the subject charge. As the charge alleged a Title VII violation, this is notice that if the Charging Party wishes to pursue this matter further, (s)he may do so by filing a private action in U.S. District Court against the Respondent(s) named above within 90 days Of receipt Of this Determination. Once this 90 day period is over, the right to sue will be lost. Filing this notice is not sufficient. A court complaint must contain a short statement Of the facts Of this case which shows that the aggrieved party is entitled to relief.

The lawsuit must be filed in U. S. District Court. Generally, suits are brought in the State where the alleged unlawful practice occurred, but in some cases can be brought where relevant employment records are kept. where the employment would have been, or where the Respondent has its main office.

If the Charging Party cannot afford. or is unable to obtain a lawyer to represent him/her, the U. S. District Court having Jurisdiction in the case may, at its discretion. assist the party in obtaining a lawyer. If (s)he plans to ask the U. S. District Court to help find a lawyer, (s)he must make this request of the court in the form and manner it requires. The request to the U. S. District Court should be made well before the end of the period mentioned above. A request for representation does not relieve the Charging Party of the obligation to file a lawsuit within this 90-day period.

The parties are reminded that federal law prohibits retaliation against individuals who have exercised their right to protest acts they believe violate the laws enforced by the Commission. Retaliation against individuals who have participated in the processing of charges or complaints by the Commission is also prohibited. These protections extend to the individuals regardless of the Commission's determination concerning the merits or the charge.

Pursuant to the Commission's regulations, this file will be destroyed two years after the date of determination.

Appendix C

On Behalf of the Commission:
s/ Ms. Issie L. Jenkins
Ms. Issie L. Jenkins
Director

Date Feb 03, 1995

cc: Office Of Human Rights Howard Cnty.

APPENDIX D. -- Decision of No Hearing, Howard County Human Rights Commission, Maryland Filed October 26, 1994

HUMAN RIGHTS COMMISSION
6751 Columbia Gateway Drive, Columbia, Maryland 21046
410-313-6430 - FALY410-313-6424 - TTY313-6401

October 26, 1994

Mr. Yiqun Guo
17730 Towne Crest Dr., #303
Gaithersburg, MD 20877

Mr. Richard Hafets, Esq.
Piper & Marbury
36 South Charles Street
Baltimore, MD 21201-3010

RE: Guo vs. The Ryland Group, Inc.
OHR Case Number: 93-07-057
HRC Case Number: 94-08-008

Dear Parties:

At the regularly scheduled meeting of the Human Rights Commission on October 21, 1994, a decision was made not to hear the appeal requested by the Complainant in the above-captioned case.

This decision was made after the Commission had an opportunity to review and consider all of the information submitted to them, including the request for appeal and the responses filed by The Ryland Group, Inc. and the Office of Human Rights. The Commission determined that no good cause had been shown by the

Appendix D

Complainant as to why it should review the finding of no reasonable cause issued by the Office of Human Rights and no public purpose would be served by hearing the appeal.

Very truly yours,
s/ Jan Nyquist, Chair
Jan Nyquist, Chair

cc: file

APPENDIX E. -- Decision and Order, and Written Findings of Office of Human Rights, Howard County, Maryland Filed July 8, 1994

HOWARD COUNTY OFFICE OF HUMAN RIGHTS
DECISION AND ORDER

IN THE MATTER OF:

OHR Case Number: 93-07-057
EEOC Case Number: 12E-93-0066

Yiqun (Alex) Guo
17730 Towne Crest Dr. #303
Gaithersburg, MD, 20877
Complainant
v.
Ryland Group, Inc.
11000 Brokenland Parkway
Columbia, MD, 21044
Respondent

Richard J. Hafets, Esquire
Piper & Marbury
36 South Charles Street
Baltimore, MD, 21201-3010
Respondent's Representative

Date of Filing: July 14, 1993

Date of Findings: July 8, 1994

This charge of discrimination, based on national origin (China), was filed by Yiqun (Alex) Guo (hereinafter Cp) on July 14, 1993, against Ryland Group, Inc. (hereinafter Rp). It was authorized and investigated by the Howard County Office of Human Rights

(hereinafter OHR) pursuant to section 12.200-12.218 of the Howard County Code.

DECISION AND ORDER

The enclosed written findings of no reasonable cause are incorporated herein as a part of this Decision and Order. Based on those findings, it is this 8th day of July, 1994, the Decision of the Administrator, OHR, that the allegations of discrimination, based on national origin (China), in the termination of his employment, as a violation of Sections 12.208 of the Howard County Code has not been substantiated by OHR investigation, and that, therefore, there is no reasonable cause to believe such discrimination has occurred. It is ORDERED that this case be closed 20 days after receipt of this order by Cp.

s/ James E. Henson, Sr.
James E. Henson, Sr.
Administrator

cc: Complainant
Respondent's Representative

HOWARD COUNTY OFFICE OF HUMAN RIGHTS
WRITTEN FINDINGS
OF
REASONABLE AND NO REASONABLE CAUSE

IN THE MATTER OF:

OHR Case Number: 93-07-057
EEOC Case Number: 12E-93-0066

Yiqun (Alex) Guo
17730 Towne Crest Dr. #303
Gaithersburg, MD, 20877
Complainant

Appendix E

v.

Ryland Group, Inc.
11000 Brokenland Parkway
Columbia, MD, 21044
Respondent

Richard J. Hafets, Esquire
Piper & Marbury
36 South Charles Street
Baltimore. MD, 21201-3010
Respondent's Representative

Date of Filing: July 14, 1993
Date of Findings: July 8, 1994

JURISDICTION

This charge of alleged employment discrimination and harassment, based on national origin (Chinese), was filed by Mr. Yiqun (Alex) Guo (hereinafter Cp) on July 14, 1993, against The Ryland Group, Inc. (hereinafter Rp). It was authorized and investigated by the Howard County Office of Human Rights (hereinafter OHR) pursuant to Section 12.200-12.218 of the Howard County Code.

Cp is alleging a violation of Section 12.208 of the Howard County Code. Cp filed a charge within six months of the alleged discrimination. Rp is in he business of building homes and other related activities and is an employer as defined Section 12.208 the Howard County Code. Rp had over 15 employees in Howard County when the complaint was filed.

CROSSFILED WITH EEOC:

The charge was crossfiled with the Equal Employment Opportunity Commission (EEOC) on July 14, 1993, in accordance with the work sharing agreement between the two agencies.

Appendix E

WRITTEN FINDINGS OF INVESTIGATION

Guo vs. The Ryland Group Inc.
OHR Case Number: 93-07-057
EEOC Case Number: 12E-93-0066

I. INTRODUCTION:

OHR finds no reasonable cause to believe that Cp was discriminated against in his termination, based on his national origin (China), for the following reasons:

a. Although Rp does not have a discipline or termination policy, Rp's manager, Arlene Malech, verbally warned Cp about his performance prior to his germination and gave Cp a memo on June 4, 1993, stating he was being terminated for poor performance, customer complaints and failure to follow orders.

b. Customers "A" and "B" corroborated that they complained to Rp about Cp's performance and the timeliness of his work.

c. Cp sent a letter to Rp on June 14, 1993, ten days after he was terminated, in which he stated the reason Ms. Malech had terminated him was, "I have statistical knowledge and long term experience in data processing. I solved all the problems accurately and timely... She [Ms. Malech] cannot tolerate someone under her who has better knowledge in her area. She is afraid that someday people will find her weak academic background." Cp did not mention discrimination.

II. ALLEGATIONS SUMMARIZED:

Cp alleges he was discriminated against, based on his national origin (China), when Rp's Manager gave him unrealistic deadlines and used him as scapegoat for her errors and terminated him without notice.

III. RP'S REPLY SUMMARIZED:

Rp denies it discriminated against and terminated Cp, based on his national origin (China). Rp has no written discipline or termination policy and has terminated numerous non-Chinese

employees for cause without a 30-day notification. Rp's practice is to immediately terminate employees with access to sensitive information.

Cp was hired as a Systems Analyst in September 1992. In a reorganization in March 1992 [err, 1993], Cp's position was eliminated. Rather than terminate Cp, Rp transferred him to the position of Customer Satisfaction Research Analyst under the management of Arlene Malech, Ph.D. This position required Cp to deal on a daily basis with customers for whom Rp provided computer generated statistical analyses. The position also required that these studies be delivered on time according to contract.

Cp did not understand Market Research and was not suited for the position. During the time Cp occupied the position of Customer Satisfaction research Analyst, he constantly argued with, and failed to follow the orders of his Manager, Arlene Malech, who has a Ph.D. in Measurement of Statistics from the University of Maryland. Cp was terminated after receiving two customer complaints concerning Cp's performance.

IV. FACTS RELIED ON:

1. On September 21, 1992, Cp was hired as a Program Analyst in the Marketing and Information Services Department.
2. In January 1993, Arlene Malech, Ph.D., was hired as Director of Customer Satisfaction. Ms. Malech has a Ph.D. in Measurement of Statistics from the University of Maryland.
3. In May 1993, Rp reorganized its Marketing Group and Cp's Position of programmer Analyst was eliminated.
4. In May 1993, Cp was selected for and accepted the position of Customer Satisfaction Research Analyst under the management of Arlene Malech.
5. In or around May and June 1993, Company "A" complained to Ms. Malech bout Cp's criticism of its computer program as well as the lateness of the analysis.
6. In or around May and June 1993, Company "B'" complained to Mr. George Tresnak about Cp's errors and his failure to deliver a statistical analysis on time.

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7. In or around May and June 1993, Cp disagreed and argued with Ms. Malech bout the statistical methods for market research.
8. On June 4, 1993, after a meeting with Ms. Malech, Mr. Doug Townsend, V.P., terminated Cp.

Cp was given a Memorandum prepared by Ms. Malech regarding Cp which stated the following about Cp's Job Performance:

> ...On May 12, 1993, George Tresnak and I met with you to discuss the requirements of the newly created position of Customer Service Satisfaction Research Analyst. At the time we discussed the depth of differences between the new position and the one which you had previously held. Specifically, those differences centered around a reorientation of the position from one which was primarily statistical analysis in nature to one which is much more project management oriented. Key components of the new position relate to the ability to communicate, both orally and in writing, and the ability to work successfully with Ryland's suppliers and contractors. At that time it was also made clear that the final authority on the project rested with me and that you were not to modify my instructions without receiving my prior consent.
>
> Alex, you are taking too long to complete assignments; projects are not being done right the first, or even the second time, and two of our major suppliers are extremely upset with us. The following will outline some of the specific instances where there have been problems.
>
> On May 13, I asked you for frequency distributions for April 1993 Customer Satisfaction data for the Southeast. I told you they were to be for each question on the satisfaction survey as well as the combinations of questions 9 and 14, and 10 and 15. I told you ...everything must be clearly labeled. On May 18, 5 days later, I found frequencies for

questions 9 and 14 and questions 10 and 15 for all regions for April 1993 on my desk....I told you that was not what I asked for and again repeated my request. Late in the afternoon I found a large stack of paper on my desk. It was a data dump for April for the Southeast region containing far more than I needed and not labeled....Finally at 11:20 a.m. on May 19 you provided me with the correct information. You took a week to do what should have taken a couple hours...

On May 10, 1993, I requested the sample for the Customer Satisfaction baseline survey....I did not receive the sample, something that should have taken no more than 24 hours, on May 14. This delayed the survey by 3 days....

Early this week, I spent a day and a half out of the office on a trip to Texas. When I returned I was greeted with chaos. Customer "B" left me a voice mail message complaining that you told him I said you were not to look at or do his work until everything of mine was finished. You and I NEVER had that conversation. He had something that needed to be done quickly and we did not meet his demands.

I never have, nor would I ever, tell you to ignore the needs of a coworker or consultant. This behavior is completely inappropriate.

Things went from bad to worse when I returned a call from Customer "A" regarding our HOW project. By her account you insulted her, questioned her competence, and tried to tell her how to run her business. You told her that she needed to reprogram her system to meet your needs and her refusal to do so was making more work for you. She felt you implied that she did not know what she was doing. Customer "A" has a long-term relationships with Ryland and has bent over backwards to accommodate our needs. After

> your conversation with her on Tuesday she wasn't sure she ever wanted to work with Ryland again....
>
> Alex, I have tried to be patient with you in dealing with these performance issues. Unfortunately, what has transpired over the last two weeks has made it necessary for us to terminate your employment from Ryland, effective immediately.

9. On June 14, 1993, Cp sent a six page letter to Rp in which he denied the reasons stated by Ms. Malech for his termination and which stated:

> ...Of course, Arlene Malech hates me. Did the things mention [sic] in her letter make her hate me? No. Was I slow and delayed her projects? No. I have statistical knowledge and long term experience in data processing. I solved all the problems accurately and timely...She can not tolerate someone under her who has better knowledge in her area. She is afraid that someday people will find her weak academic background...

10. On July 14, 1993, Cp filed subject charge.

V. THEORIES OF DISCRIMINATION:

Disparate Treatment

1. Cp is a member of a protected class, national origin (China).
2. Cp alleged he was qualified and working as a Customer Satisfaction Research Analyst.
3. Cp alleged he was made a scape-goat and terminated without notice while employees not in his protected class are given 30-days notice.

VI. CP'S SPECIFIC ALLEGATIONS:

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Allegation Number 1 - I was terminated without notice and given 15 minutes to leave the premises. Other non-Chinese employees who were terminated were given 30-days notice prior to leaving.
Results of Investigation Number 1 - OHR substantiated that Cp was given 15 minutes to leave the Premises after he was informed he was terminated but is does not lead to an inference of discrimination because Rp's practice is employees with access to sensitive information who are terminated for use are terminated immediately and other employee not in Cp's protected ass were ordered to leave the premises shortly after termination.

OHR found that employees "X" (white/female) and "Z" (black female) were ordered to leave Rp's premises immediately after their termination.

Allegations Numbers 2 and 3 - Arlene Malech would give me un-realistic deadlines and continually used me as her scapegoat when she made errors. She would also demand that I complete tasks for her and put off the request from others and then deny she had done it. She treated me in a disrespectful manner yelling and screaming at me in an insulting manner.
Results of Investigation 2 - OHR substantiated that Cp did not meet and was held responsible for not Meeting, deadlines by his Manager, Arlene Malech. OHR also substantiated that Cp was involved in a number of disagreements with his Manager Arlene Malech but this does not lead to an inference of discrimination because Cp did not follow and challenged his Manager's instructions.

Ms. Malech denied she made Cp a scapegoat. Ms. Malech stated that she offered Cp the position of Customer Satisfaction Research Analyst when his position of Programmer Analyst was eliminated in a reorganization. She stated that Cp never adjusted to his new job. Ms. Malech said Cp not only refused to follow her directions as to how to perform his tasks but also challenged her orders concerning conducting Customer Analyses and the validity of the results. Ms. Malech stated that Cp created extra work by doing more in-depth analyses than was required or authorized. She stated that this unnecessary extra work caused a number of projects he was

assigned to be late. Ms. Malech stated and Customer "A" corroborated that Customer "A" complained that Cp told her to rewrite her computer program because it did not make any sense and inferred Customer "A's" data was not readable or usable. Customer "A" stated that due to her problems dealing with Cp she had to tabulate one study herself and subcontract out two other studies.

Ms. Malech said, and Customer "B" confirmed, that Customer "B" complained to Rp that Cp did provide the data requested for a presentation on time and, when presented late, it was not properly formatted. Customer "B" stated that to meet his needs he had the information processed by a sub-contractor who delivered the data within three days. Customer "B" stated hat he had no confidence that work requested from Cp would be done correctly or on time. Customer "B" stated that he reported this to George Tresnak.

Mr. Tresnak [err, Tresnak, same below] stated that he supervised Cp when he was a Programmer Analyst. Mr. Tresnak said that the position of Programmer Analyst was eliminated in a reorganization in May 1993, and Cp was offered and accepted the position of Customer Satisfaction Research Analyst under the management of Arlene Malech. Mr. Tresnak said that Cp had never previously dealt with customers. He said that Customer "B" complained to him about the quality and timeliness of Cp's work for him.

II. LEGAL SUMMARY:

Cp initially established a prima facie case of discrimination, based on national origin (China), when he alleged RP terminated him without notice while employees not in his protected class were given 30-day's notice.

Once discrimination is alleged, after Cp has established a prima facie case, the burden shifted to Rp to articulate some non-discriminatory reasons for its actions. Rp's non-discriminatory reasons are Cp was terminated based on his inability to follow his Manager's orders, and based on customer complaints.

The burden then shifted back to Cp to show that the reasons given by Rp were a pretext for discrimination. Cp has not met that burden.

Although Cp believes he was terminated and forced to leave Rp's premises immediately after his termination because of his national origin, the factual scenario does not support his belief. OHR concluded that Cp was terminated for failure to follow his Manager's work orders and for not meeting the requests of Rp's Customers. These facts combined with the fact that he stated in his letter to Rp that he thought he was terminated because Ms. Malech could not tolerate an employee with more knowledge working for her, and the fact that other employees were required to immediately leave Rp's premises leads OHR to find no reasonable cause to believe Cp was terminated based on his national origin.

VIII DETERMINATION:

OHR determined that there is no reasonable cause to believe Cp was terminated, based on his national origin (China).

IX. APPEAL PROCESS:

Either party to this case can appeal the attached Decision and Order by submitting a request for an Administrative Hearing within 20 days of receipt of these Findings and Decision and Order, to the Howard county Human Rights Commission. The Commission may decide to hear an appeal after good cause is shown, and if it determines that such an appeal is in the public interest. Such appeal must:

1. be in writing
2. state what portion Of the Administrator's Findings is being appealed
3. be addressed to:

Chairperson
Howard County Human Rights Commission
6751 Columbia Gateway Road

Appendix E

Columbia, Maryland 210465

Date Submitted: July 8, 1994
s/ Robert L. Coggins
Robert L. Coggins
Investigator

Date Approved: July 8, 1994
s/ James E Henson, Sr.
James E Henson, Sr.
Administrator

APPENDIX F. -- Order of U.S. Fourth Circuit Court Filed January 21, 1997

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
January 21, 1997

No. 96-1388
CA-95-1319-JFM

YIQUN GUO
Plaintiff - Appellant

v.
THE RYLAND GROUP, INCORPORATED
Defendant - Appellee

and
ARLENE MALECH; DOUGLAS TOWNSEND
Defendants

On Petition for Rehearing with Suggestion for Rehearing In Banc

The appellant's petition for rehearing and suggestion for rehearing in banc were submitted to this Court. As no member of this Court ~~or~~ the panel requested a poll on the suggestion for rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied.

For the Court,
s/ Patricia S. Connor
Patricia S. Connor
CLERK

Appendix G

APPENDIX G. -- Mandate of U.S. Fourth Circuit Court
Filed January 29, 1997

UNITED STATES COURT OF APPEALS
FOR THE FOURTH. CIRCUIT

FILED
January 29, 1997

No. 96-1388
CA- 95 -1319 -JFM

Guo v. Ryland Group

M A N D A T E

The judgment of this Court dated 12/2/96 takes effect today.

PATRICIA S. CONNOR
CLERK

Appendix H

APPENDIX H. -- Petitioner's Petition for Rehearing in U.S. Fourth Circuit Court Filed December 13, 1996

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT
96-1388 GUO v. RYLAND GROUP
CA-95-1319-JFM

APPELANT'S PETITION FOR REHEARING AND SUGGESTION FOR REHEARING IN BANC

Appellant, Yiqun Guo, hereby respectfully submits his Petition for Rehearing pursuant to Local Rule 40, and Suggestion for Rehearing in Banc pursuant to Local Rule 35.

I. STATEMENT OF PURPOSE

There are six reasons given by the district court of Maryland for which it granted appellee's Summary Judgment. It is undisputed that the district court incorrectly decided ALL the material facts below and gave all the wrong reasons. They are all reversible errors and was overlooked in the decision.

a. Appellant's original job as a programmer analyst support marketing research was not closed and he was not given any new job when he was forced to report to his new manager, Dr. Arlene Malech, part **II**, which proves that the district court reason 1 and 3 are wrong.

b. Appellant did not make any, even tiny, mistake after he reported to Dr. Malech. Dr. Malech and other witnesses made false and defamatory testimony to the court regarding appellant's job performance, part **III** and **IV**, which proves that the district court reason 2 is wrong.

c. Appellant's was treated substantially worse than all other similarly situated employees although he did excellent job under slave-like working condition, part **V**, which proves that the district court reason 5 and 6 are wrong.

d. Appellant's replacement was a college intern and had comparable but poorer qualifications for Appellant's job, part **VI**, which proves that the district court reason 4 is wrong.

The district court applied wrong law based on wrong determination of all those material facts. There is NOT any reason that district court decision should be affirmed. The case of Proud v. Stone, 945 F. 2d 796 (4th Cir. 1191) is based on the fact that same person who hired and fired the plaintiff. It is NOT the situation in appellant's case. Based on undisputed facts, appellant has satisfied all the requirements in either Clay, 955 F.2d case or McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) case, part **VII**. These laws are, however, overlooked in the decision and are not addressed at all.

The following will give detailed proof of those material facts.

II. APPELLANT'S ORIGINAL JOB AS A PROGRAMMER ANALYST

SUPPORT MARKETING RESEARCH WAS NOT CLOSED

AND HE WAS NOT GIVEN ANY NEW JOB

A. Appellant Was Hired As A Programmer Analyst Support Marketing Research and Got Very Good Probation Period Appraisal

Appellant was hired on Sep. 21, 1992 for the position posted in Washington Post on May 10, 1992, which states:

> **Programmer/Analyst, Support Marketing Research**
>
> **Must have exper: Statistical data analysis (SAS/SPSS/etc.); PC programming; Databases (Dbase/Foxpro/Oracle/etc.); Interpersonal comm/ problem solving skill. Prefer knowledges Lotus/Graphics; Market research background. Respon: stat. analysis/ modeling/ coding/ execution/ generate reports.**

Because of the importance of statistical data analysis in this position, it is emphasized in the first sentence of the post. The position is

substantially different from other type of programmer analyst position. Appellant was **not** given any job description other than this post. The Programmer Analyst job description provided by appellee in the Memorandum in Support of appellee's Motion for Summary Judgment dated 11/30/95 is totally irrelevant information. Appellee is unable to point out **who** gave it to appellant.

Appellant held MS degree in statistics and had one year PhD training in economics concentrated in econometrics. Appellant also had long term programming and data analysis experience. Appellant was well qualified for the position and got very good new employee appraisal. His prior manager George Tresnak in Ryland comments that his "performance is excellent" and increased $3,000 of his salary in Feb., 1993. The facts strongly supports that appellant was able and did support marketing research very well.

B. Dr. Arlene Malech Was Appointed to the Director of Customer Satisfaction Research Program as Early as in Feb. 1993 And Appellant Spent Most Time Working For Her And Treated Her As His Manager Before Actually Reporting To Her. Appellant Also Had Worked With Barbara Bridge And Charles Riter. No Problems Heard

Dr. Arlene Malech was hired in late Jan., 1993, and was soon be appointed to the Director of Customer Satisfaction Research Program on Feb. 8, 1993. Her job type and responsibility remained same since she joined Ryland until her termination in Feb. 1994. Appellant was the only one supported her programming and preliminary statistical analysis since Jan., 1993, until his termination on 6/4/93 and appellant spent 80 percent time working for her before reporting to her. Appellant followed all her instructions and treated her as his manager even if she was not. Although Dr. Arlene Malech often created difficulty in appellant's job and often screamed at him, appellant still provided excellent service for her. Douglas Townsend stated that appellant "had had good reviews and done very good job for George and Terry Rose and all that he worked with." The time period when appellant reported to George Tresnak and Terry Rose was before May 17, 1994. Both Ryland 9/2/93 response to the Office

of Human Rights (OHR), Howard County, Maryland, and Dr. Arlene Malech's Affidavit state that they believed that appellant "would have little difficulty making the transition to new job". It implies that appellant was technically capable to do the "new job". In the Job Performance prepared by Dr. Arlene Malech dated June 4, 1993, which alleges that appellant did poor job performance, there is also not any incidence regarding the problems prior to May 10, 1994. Both parties agrees that appellant did excellent job before May 10, 1993, on which appellant was ordered to report to Dr. Arlene Malech, effective May 17, 1993.

In the same time period, appellant also had a number of opportunities to work with Ryland subcontractors, Barbara Bridge and Charles Riter, without hearing any problems. Barbara Bridge has testified that she had not problem working with appellant in two projects before appellant reporting to Dr. Arlene Malech.

The facts strongly support that appellant was able and did satisfy Dr. Arlene Malech's marketing research needs.

C. Why Appellant Was Forced to Report Dr. Arlene Malech. There Was NO "New Job" At All

In Feb. 1993, several weeks after Dr. Arlene Malech joined Ryland, appellant informed Douglas Townsend that he did not want to report to Dr. Arlene Malech because appellant felt she did not like him. On April 23, 1993, appellant finished California Communities project on time. Dr. Arlene Malech was not happy about his on time and, as a pretext, she complained appellant did not label some results in which she even did not give him labels. On May 10, 1993, Douglas Townsend ordered appellant to report to Dr. Arlene Malech in spite of appellant explained once again that he had hard time to work for her. In order to force appellant report to Dr. Arlene Malech, Douglas Townsend told appellant his job was closed and he was doing "new" job for Dr. Arlene Malech. Knowing Ryland always gave months to the employees whose jobs were closed to look for a new job, Douglas Townsend did not give appellant this option.

D. The Reason to Eliminate Appellant's Programmer Analyst Job Is Totally A Pretext.

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Appellee states that the reason appellant's job was eliminated was that appellee "decided to begin using outside contractors" to perform appellant's work. Appellee, however, can not explain that having an excellent programmer in house why it still needed to do so. Just the opposite, in her deposition, Dr. Arlene Malech stated, "We were going to be generating all of the reports rather than having the outside supplier generate them." Clearly, the reason to eliminate appellant's programmer analyst job is totally a pretext.

After appellant was ordered to report to Dr. Arlene Malech, appellant performed exact job responsibility as before. There was no Employee Status Change Form made which is required in Ryland Employee Handbook would there be a new job or transferring. When asked, Dr. Arlene Malech explained she was too busy. This is not credible because she had plenty of time to record appellant's daily work in details. Why did not she have time to finish an Employee Status Change Form which is required and should not take more that five minutes? Charles Riter, who consulted for Ryland on "what department should be", and personally involved "making decisions about who they should hire to set up and run their customer satisfaction program", even did not know the Customer Satisfaction Department was "created". When George Tresnak spoke to appellant on May 10, 1993 regarding appellant's transferring to Dr. Arlene Malech, he did not say anything about the job closing. Rather, he told appellant that some times it was hard to find a good manager and if appellant did not want to do so, Ryland would give him 3 months to look for a new job. Apparently, the only purpose of "closing" appellant's Programmer Analyst position was forcing appellant to report to Dr. Arlene Malech.

E. All the Job Type Related Allegations in Dr. Arlene Malech's "Job Performance" Fall within the Job Description for Which Appellant Was Originally Hired

In fact, all the job type related allegations in Dr. Arlene Malech's "Job Performance", which outlines the reasons appellant was terminated, fall within the job description for the position posted in Washington Post, May 10, 1992 (see part **I. A.**), for which appellant

was originally hired. The project regarding frequency distributions for Southeast Region and sampling of Customer Satisfaction baseline survey are belong to "statistical data analysis"; Charles Riter's project and Barbara Bridge's project are belong to "coding/ execution/ generate reports". All other allegations are not job-type related. They related to whether appellant said something or not. This fact itself already proves that appellant's termination had nothing to do with any technical issue.

Although appellee repeatedly states that "new" job was substantially different from appellant's Programmer Analyst support marketing research position, appellee, however, is unable to point out any work that appellant performed after reporting to Dr. Arlene Malech was different type from before. Just the opposite, Douglas Townsend admits that the "new job" was "computer knowledgeable and programmer type profession".

F. From Appellant's Replacement The Court Can Tell That appellant's Programmer Analyst Job Was Not Closed At Least Until Sep. 1993

From appellant's immediate replacement, the Court can also conclude that his job was not closed. Right after his termination, Ryland hired Jeff Lochte, a full time programmer, to replace appellant. Douglas Townsend has testified that Jeff Lochte also "was a computer type guy". Whether he was temporary or nor is not important. The important is that until September 1, 1993, on which Ryland hired Lori Winokur as Customer Satisfaction Research Analyst (CSRA), appellant's Programmer Analyst job was not closed. Even if from September 1, 1993, appellant's Programmer Analyst job was still partially open if CSRA job was a different job from appellant's Programmer Analyst job. See also part **V** for further proofs.

G. Legal Arguments Regarding to Whether Appellant Was Given a "New Job"

The reasons appellee used to prove that appellant was given a new job are based on: 1) Job description of Programmer Analyst for other departments which has been proven (in part **II. A.**) that is

irrelevant information; 2) appellant was given the job description for CSRA and was told the differences of the two jobs; 3) appellee hired some one in CSRA position three (3) months later.

Those reasons in not way prove that appellant was given a new job. For example, one can give a programmer a job description of an attorney and tell him his job is closed and he is doing an attorney job. Does it mean any thing that the programmer's job is closed and he is having a new job? There is certainly no answer. Whether he is having new job must see what he was doing before and what he is doing now. Whether the company hires an attorney or not later is totally irrelevant information. As fully proven above, appellant was doing exactly same job as before. He was an excellent programmer in supporting marketing research and he worked well with both Barbara Bridge and Charles Riter. There was no any possibility that he suddenly become a worst programmer right after he reported to Dr. Arlene Malech.

In order to prove appellant was given a new job, appellee MUST prove that any project type mentioned in Dr. Arlene Malech's "Job Performance" was different type from those before appellant reported to her. If appellee fails to prove this then the job description for CSRA can not serve as the evidence of a new job. Rather, it serve as the evidence of the intention that Dr. Arlene Malech wanted to terminate appellant.

It is undisputed that appellant was forced to report to Dr. Arlene Malech and after reporting to Dr. Arlene Malech appellant's job type had no any change at all. Giving appellant a "new" job was just providing the means for Dr. Arlene Malech to terminate appellant simply because George Tresnak did not want to do so.

III. APPELLANT WAS TERMINATED WITHOUT ANY LEGITIMATE REASON

HE DID NOT MAKE ANY, EVEN TINY, MISTAKE

AFTER REPORTING TO DR. ARLENE MALECH

There are four allegations stated in appellee's Summary Judgment which sought to prove that appellant did poor job performance. 1)

Appendix H

The request for data on Southeast Region. 2) The Customer Satisfaction Baseline Survey. 3) Barbara Bridge's complaints. 4) Charles Riter's complaints.

Those events in no way prove that appellant did poor job performance but they are the evidences that appellant was totally wronged.

A. Appellant Should Have Been Given Extra Credit in Southeast Region Project

Appellee's first complaint is appellant gave Dr. Arlene Malech 5 regions data rather than just the Southeast Region. Appellee horribly allege appellant doing this was "misconduct" and bad attitude towards his job. The explanation for Southeast Region project had been clearly given in the letter appellant sent to appellee on 6/14/93. Appellant states:

> First, she asked me for the frequencies for questions 9 & 14, and 10 & 15 for Southeast Region. Usually when the new data came, she asked me for all the frequencies for all questions. Therefore, I asked her again whether she needed other questions. She said that she did not need them... The routine job was producing frequencies for all the regions. There were several projects on my hands then ... The program for Customer Satisfaction Survey was made for all the regions. To save my time, I gave her results for all of 5 regions classified by region. I did not want her to come back and ask me for the data for other regions. All she needed to do was to pick out one of five outputs. But she changed her request by adding the frequencies for all the questions. After I gave her the new results, again classified by region, she asked me to give her the only one for Southeast Region. I removed the outputs for other 4 regions and returned to her. She changed her request again by asking me to label all the choices for all the questions.

Notice that <u>Dr. Arlene Malech even did not complaint when first time appellant gave her the results for all of 5 regions</u>. Rather, she "changed her request by adding the frequencies for all the

questions". Had she complained first time, appellant would not have given her results for all of 5 regions second time. The only result appellant would get was screamed by her again. The reasons were so clear that appellant wanted to save time and to produce the results faster. Dr. Arlene Malech, therefore, could get the results earlier. The results was classified by region with Southeast Region on the top. All she needed to do was picking up the top one. Both benefited from it. Why not? What kind of frustration was it? Appellee intentionally removed appellant's statement that "the results was classified by region" and tried to mislead the court.

This event in not way prove that appellant violated Dr. Arlene Malech's instruction. Rather, appellant should have been given extra credit for producing more results in a shorter time because those results were what Dr. Arlene Malech had requested before and she was going to use them later.

B. Appellant Made Standard Business Conduct in The Customer Satisfaction Baseline Survey Project

Appellee's second allegation regarding appellant's job performance is that appellant gave Jose Roig, the representative from Standard Register, different information from Dr. Arlene Malech about what to put on the mailing labels for the Customer Satisfaction Baseline Survey project.

The explanation for this event had also been clearly given in the letter appellant sent to appellee as early as 6/14/93. Appellant states:

> The true story was that she never told me any thing about the mailing labels. All I was told was to give Jose the ASCII files and field descriptions in a disk. When the two persons from Standard Register asked me whether they needed to add the division and region on the labels. I said, "I don't know. She told me we need some identification numbers to trace back to the original database (see the Attachment 2, #2). It is the sales number in my file. You may put the sales number on the label, but please make sure to call her and check if it is what she wanted." In fact, the division number and region were also included in the files. Dr. Arlene Malech was not in

> from Friday, May 14 to Monday, May 17. As soon as she returned on Tuesday, I told her about this...

In this event, appellant just made a suggestion based on the best of his knowledge in Dr. Arlene Malech's absence and reported to her right after she came back. It was very standard business conduct in this situation. Appellee has NOT proof that Dr. Arlene Malech had told appellant what to put on the mailing labels. How can it conclude that appellant violated Dr. Arlene Malech's instructions?

On June 1, 1995, Wan Chang, appellant's first attorney, and appellant made a conference call to Jose Roig regarding this project. Mr. Roig clearly remembered that he received and read the copy of appellant's 6/14/93 letter sent to appellee and there is nothing wrong in the letter regarding this event. He clearly remembered that they (Jose and Mark) and appellant all decided to let Dr. Arlene Malech make decision.

C. The Explanation for Barbara Bridge's Complaints

Appellee's third allegation regarding appellant's job performance is that appellant insulted Barbara Bridge when he went to check Ms. Bridge's screen on May 25, 1993. Again, the explanation for this event had also been given to appellee as early as 6/14/93. Appellant states:

> When Dr. Arlene Malech asked me to check Barbara's screen for the Realtor Survey, I asked her, "Is it nice to do that?" I did not want to do it because we had made a successful data transaction before without checking her screen, and apparently, Barbara would fell that we did not trust her job. She, however, ordered me to do it. It was a very short visit. Because I did not know Barbara's system could not accept characters (although her screen showed some characters) and the sales number in the file contained two characters, we discussed some alternatives for the identification purpose. The problem was solved smoothly. If Barbara felt some uncomfortable, it should be caused by the order itself.

emphasize added. Barbara Bridge had confirmed that there was not problem regarding this event. She, however, did make some testimony by saying that she felt being insulted by appellant when he went to replace new data for Paint Study project. This is the only events (Paint Study) she alleged had problem with appellant. By simple cross examination the Court can easily tell it is a false testimony.

The Paint Study project was the "upcoming survey project" in Malech's 'Job Performance' memo dated 6/4/93 which could never happened. By that time, 6/4/93, the survey had not been started, how could appellant get data on May 25, 1993 and inferred Barbara Bridge's data was not good?

The contents of the complaints are completely deferent from Dr. Arlene Malech's version to Barbara Bridge's version. In Malech's 'Job Performance' memo she stated:

> By her account you insulted her, questioned her competence, and tried to tell her how to run her business. You told her that she needed to reprogram her system to meet your needs and her refusal to do so was making more work for you.

Barbara Bridge, however, only testified that she felt been insulted. In fact, she even denied appellant had asked her "to reprogram her system".

The event that appellant went to Barbara Bridge's office to replace new data happened on April 23, 1993. The project name was California Community survey. Ms. Bridge has testified that no problem regarding this project. She, however, moved the scenario in this project to Paint Study project. Apparently, the date regarding California Community survey is useless because it was before appellant reporting to Dr. Arlene Malech (starting on May 17, 1993) while Appellee need some events happened after appellant reported to Dr. Malech as the pretext for appellant's termination.

Ms. Bridge may argue that this mistake was caused by disremembering because it happened long time ago. Ms. Bridge, however, wrote a memo in August, 1993, regarding this event and

confirmed it to Dr. Robert Coggins, the investigator from OHR. She must clearly remember what happened at what time. In fact she did "keep time sheets" for each project and she did remember that those three projects, HOW Realtor, HOW Customer and Paint surveys, "all done roughly within the time frame". None of them, however, had data available by May 25, 1993.

The undisputed facts clearly demonstrate that **Barbara Bridge's testimony is perjury**.

In fact, Barbara Bridge had testified that appellant's termination had "no parts" of her and she called Douglas Townsend asking why she got a letter from appellant. Apparently, she did not make any complaints against appellant before he was terminated.

D. Appellant Provided Correct Format in Coca-Cola/Giant Promotion Survey Tabulation Sent to Charles Riter

Appellee's last allegation regarding appellant's job performance is that appellant provided wrong format in Coca-Cola/Giant promotion survey tabulation based on Charles Riter's testimony. It can be clearly proven that his testimony is perjury and defamatory.

First, Charles Riter threw away all the related materials. He threw away the previous memo which outlines all the requirements about the report format and most part of appellant's report. Charles Riter stated that the reason he threw away appellant's results was because "it was garbage", but he had no explanation why he kept the first page of this "garbage".

Second, by comparing the Exhibits in Mr. Riter's deposition, the Court can easily determine that appellant provided right format. (See appellant's Informal Brief for copies.) In Charles Riter's deposition, he provided one example of correct format layout and emphasized "it's important". Its first page is the exactly the same as appellant's report. In both reports, the column heading are responder's personal information, age, sex, marital status, etc., and the row headings are the answers to the survey. Even the layout of row totals and column totals are the same. In fact, the page 4 in the report Charles Riter sent to Bob Knight on June 1, 1993, is also exactly the same format

as appellant's report with home builder names in the left most column. The percentages are also almost identical.

Those facts clearly prove that **Charles Riter's testimony is perjury and defamatory**.

E. Appellant Is An Excellent Programmer

There is no doubt that appellant is an excellent programmer. All appellant's managers, except Dr. Arlene Malech, regardless male or female, have given appellant excellent appraisals. His prior manager George Tresnak in Ryland commented that his "performance is excellent". His manager Phil Vergo in Computer Sciences Corp. (CSC) appraised that he "is a competent programmer with an excellent ability to grasp new concepts and implement them", and his "greatest strengths include a strong commitment to developing high quality software products". Appellant was promoted to senior level technical staff after 14 months worked in CSC. He was hired by SAS Consulting Services (acquired by SAS Institute later) as a consultant, in which only excellent SAS programmer could be considered and SAS was just the computer language appellant used in Ryland. His current manager Maria Keyser commented that he is "very resourceful" and "can be counted on to get the job done".

F. Legal Arguments Regarding to Appellant's Job Performance

As fully demonstrated above, all the allegations against appellant are either false or ridiculous. Appellant did not make any, even tiny, mistake after he reported to Dr. Malech. Just the opposite, appellant did excellent job in Ryland under slave-like working condition. He tolerated all the discriminatory treatment against him and kept working by considering himself a Ryland employee. In order to meet Dr. Arlene Malech's ridiculous requirement, he voluntarily worked on Memorial Day which was company holiday. After being wrongly terminated, he still consider Ryland project and worked for Harvey Singer on June 5, 1993. Appellant was terminated without any legitimate reason.

All the stories have two sides. Appellee MUST prove that which part of appellant's explanation to Dr. Arlene Malech's allegations is

not credible. If it fail to prove it, all it can conclude is it do not know whether appellant did poor job performance or not. This still leads to the conclusion that appellant was terminated without any legitimate reason.

The logic appellee conclude that appellant did poor performance is self-contradictory. Barbara Bridge testified that she felt being insulted because appellant inferred her data was not good. Without verifying it, appellee believed that appellant had said that and concluded that it was appellant's mistake. While Charles Riter testified that the report appellant gave him had wrong format, why not appellee concluded that Charles Riter insulted appellant? Just opposite, appellee still concluded that it was appellant's mistake. The motive was so clear that whatever happened, it had to be appellant's mistake because appellee needed some pretext to terminate him.

In fact, no one in Ryland had verified Dr. Arlene Malech's allegations against appellant and it concluded that an excellent employee suddenly became a worst employee right after reporting to Dr. Arlene Malech. After appellant sent the letter which complains he was "grievously wronged" and was treated like a slave, appellee still did not make any investigation.

As fully proven in this part, appellant did not make any mistakes while worked in Ryland. Any arguments based on the presumption that appellant did poor job performance is, therefore, invalid.

IV. FALSE TESTIMONIES GIVEN BY APPELLEE'S WITNESSES AND

MISLEADING INFORMATION PRESENTED BY APPELLEE

In part **IV**, appellant's Informal Brief Memo, appellant has fully proven that Dr. Arlene Malech and Douglas Townsend were perjury. The law is so clear what punishments should be made for perjury. Therefore, it is invalid for appellee to use any of their testimonies as evidences. Appellant has also proven that appellee provided a number of misleading information to the district court.

V. THE SERIOUSLY DISCRIMINATORY TREATMENT

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TOWARDS AN EXCELLENT EMPLOYEE

A. Appellant's Welcoming Memo Was Canceled When He Arrived Marketing Group

On appellant's arriving Marketing Group, his welcoming memo was canceled while all other people there got welcoming memo. Appellee is unable to point out which employee in Marketing Group did no have welcoming memo regardless whether they were transferred from other departments or newly hired by Ryland.

B. Dr. Arlene Malech Often Screamed Obscenities At Appellant And Made Disrespectful And Condescending Remarks Towards Him Before Appellant Reported To Her

Dr. Arlene Malech screamed at appellant from far distance regarding alleged data error in April or May, 1993. She also screamed at appellant from far distance asking for her results in April or May, 1993. She intentionally made disparaging remarks towards appellant. Dr. Arlene Malech had always talked to all other employees very nicely. Appellee have not given any example that Dr. Arlene Malech screamed at any other employees.

C. Dr. Arlene Malech Started To Prepare The Termination Of Appellant Even Before Appellant Formally Reported To Her. She Screamed At Appellant Much More Often And Imposed Unrealistic Deadlines To Appellant. Appellant Was Ready To Be Terminated

After known appellant would reporting to her, Dr. Arlene Malech prepared a job description for him. Notice the important dates order here. Appellant was ordered to report Dr. Arlene Malech on May 10, 1993, and his job description was made on May 12, 1993. Dr. Arlene Malech's intention to terminate appellant was apparently expressed in her job description. She intended to omit the essential statistical part and to exaggerate the business administrative part in order to create an image that appellant was not able to do the "new job". Knowing appellant is majoring in statistics and good at programming, she stated that, "A BA or BS in Business, Psychology, Sociology, Consumer Behavior or related field with a

minimum of 9 hours of statistics/research methodology is preferred." She emphasized nothing about statistics and programming.

After appellant was ordered to report to her, Dr. Arlene Malech tried her best to create most difficult working environment for appellant. She constantly changed her request and complained appellant delayed projects. She gave appellant unrealistic deadlines and forced appellant to provide the results every day. Here is an example. Dr. Arlene Malech asked appellant to finish two projects, Homeowner Warranty Realtor and Riter's Giant Food Coca-Cola Promotion survey tabulations, in two (2) days. But only one of the projects, Riter's Giant Food survey tabulation, took three (3) days to finish by using outside supplier. She ordered appellant not to work on Charles' project and complained appellant delayed his project. She more often screamed at appellant on May 13, 19, 26, 28, and June 3, 1993, and intentionally insulted appellant in public. As soon as she knew appellant would report to her, Dr. Arlene Malech started to prepare the materials for terminating appellant even **before** appellant formally reported to her.

Appellant was also ready to be terminated. He made detailed records of daily work starting May 10, 1993, trying to protect himself. This fact itself already proves that appellant did not want to report to Dr. Arlene Malech and was forced to do so.

D. Discriminatory Treatment Towards an Excellent Employee In The Termination

On June 4, 1993, Douglas Townsend informed appellant that he was terminated. Douglas Townsend presented Dr. Arlene Malech's "Job Performance" to appellant who saw it the first time and stopped him to make any explanation. When asked why no gave appellant a chance to explain, Douglas Townsend's reason was they "had made the decision to terminate him". Apparently, the purpose was to terminate appellant. Whatever the allegations against appellant were true or false, appellant had to be terminated. Douglas Townsend never talked to appellant regarding the allegations before his termination on June 4, 1993. He never gave appellant a probation

period while appellee usually gave problem employees a probation period. His "knowledge" of appellant's "poor performance" was solely based on Dr. Arlene Malech's reports. On the other hand, on May 10, 1993, appellant complained to Douglas Townsend that Dr. Arlene Malech alleged appellant did not label some result she requested while she even did not give him the labels. As the result, appellant was forced to report to Dr. Arlene Malech and was terminated shortly. After appellant was terminated, appellant wrote a letter explained all the allegations against him and sent it to Roger Schipke, Ryland CEO, and Douglas Townsend separately. Douglas Townsend, however, refused to talk to appellant. When Barbara Bridge called him and asked him why she got appellant's letter, Douglas Townsend told her to "throw it out". What a distinct attitude towards different employees.

On June 4, 1993, both Douglas Townsend and Dr. Arlene Malech forced appellant to leave in fifteen minutes. Appellant even did not finish reading the allegation, against him and even did not have chance to pick up his personal belongings. Appellant was escorted out of the building right away. No any other employee was discharged in the same manner. When asked, Douglas Townsend's explanation was that appellant asked whether he could take some sample programs, and Douglas Townsend was intended to give appellant some time to pack his personal belongings. Here Douglas Townsend intentionally reversed time order. **The escort action had started in Douglas Townsend's office before appellant asked Douglas Townsend the question**. In Douglas Townsend's office, Dr. Arlene Malech told appellant that he must leave in fifteen minutes and both Douglas Townsend and Dr. Arlene Malech went with appellant to his cubical to check every thing he took. The place appellant asked the question was in his cubical with both Douglas Townsend and Dr. Arlene Malech standing aside him. In the last line of Dr. Arlene Malech's well-prepared "Job Performance", it also clearly states that they had already intended to terminate appellant "immediately".

Each and all the terminated employees in Ryland Marketing Group had severance pay regardless whether the reason was job eliminated

or the performance issues while appellant had nothing. Douglas Townsend states, "no matter how long you have worked for Ryland, and you're terminated, or you are laid off, or whatever, the minimum amount of pay you would get as a severance package would be one month." Douglas Townsend, who had been hired by Ryland since 12/1/88 and was one of the top managers in whole company, should have been well aware what the company's severance pay policy. When asked why appellant did not receive severance pay, Douglas Townsend pretended that he did not know that. In appellant's termination form, Box 6, signed by both Dr. Arlene Malech and Douglas Townsend, appellant's severance pay, however, was clearly filled with "N/A". This fact also supports that Douglas Townsend was no willing to tell the truth.

Each and all the terminated employees in Ryland Marketing Group had letters stating the conditions of termination, such as severance pay, outplacement assistance, Cobra, life insurance, vacation, etc. Appellant, however, received only one sentence, "terminate your employment from Ryland, effective immediately". What a distinctively different treatment.

In the middle of page 1, the letter appellant sent to both Roger Schipke and Douglas Townsend on June 14, 1993, he states, "I was told of the termination of my employment with Ryland on Friday, June 4, 1993, and was required to clean up all my personal belongings and to leave in about fifteen minutes. It was the worst experience in my life"... "I had no chance to explain what happened and even no chance to clean up my personal belongings" Appellee admits that the Human Resource Dept. do deal with employment concerns. After received appellant's letter regarding the totally inhumanity treatment against him, appellee, however, did not make any investigation and did not response even a word.

E. The Way Appellee Concluded That Appellant Did "Poor Job Performance" Had Already Violated Basic Human Rights

One of Ryland pretext is that it terminated appellant based on its employment believe. They listed Arlene Malech's allegations, Barbara Bridge and Charles Riter's complaints. In fact, neither

Douglas Townsend nor anyone else had contacted any person other than Arlene Malech regarding appellant's job performance. The most serious allegation against appellant was that appellant told Jose Roig, the rep from Standard Register, to put different information on their mailing labels. No one had contacted Jose Roig regarding this event. Whether Jose Roig, Barbara Bridge or Charles Riter's had made complaints or not is not important. The key is that appellee made conclusion that appellant did "poor job performance" was totally based on Arlene Malech's reports. They did not want to verify any fact. Without talking to any witness including appellant, Ryland concluded that appellant did "poor job performance" and decided to terminate him immediately who was an excellent employee and who told Douglas Townsend that Arlene Malech did not like him. The way Ryland concluded that appellant did "poor job performance" had already violated basic human right. They did not give appellant any chance to explain, a very basic human right, before he was terminated. Not to speak that appellant was not allowed to explain on the day he was told those allegations first time and was terminated immediately. Apparently, appellee is well aware that appellant was wronged and is willing to keep him being wronged.

It is undisputed that it is a very basic human right to let appellant explain. Only slave in this world is no allowed to explain. But appellee never want to do that. It is clear that the way from which appellee making conclusion of appellant's "poor job performance" is discriminatory.

F. Continuous Discrimination

After appellant was wrongly terminated, appellee not just disregard his complaints. It continued its discrimination even further. When appellant applied unemployment benefit, knowing appellant was eligible for the benefit, appellee appealed appellant's benefit in order to create more difficulties in appellant's life.

G. Legal Arguments Regarding To The Discriminatory Treatments Against Appellant

Appellee made numerous arguments regarding the discriminating treatments against appellant. All of them, however, were based on

the false presumption that appellant was terminated for cause. All it did were trying to explain why appellant was treated differently from other employees. Appellee has not given any example that one in Marketing Group did not receive welcoming memo. Appellee has not given any example that one was forced to report to a bad manager. Appellee has not given any example that one was constantly screamed at and was insulted in public. Appellee has not given any example that one was imposed unrealistic deadline. Appellee has not given any example that one was alleged that he did poor performance and was not given any chance to explain. Appellee has not given any example that one was force to leave in fifteen minutes and was escorted out of the office. Appellee has not given any example that one was not placed in a probation before appellant was terminated. Appellee has not given any example that one was not given any severance pay in his termination. Appellee has not given any example that one was not given the salary for Saturday and Sunday in the week he was terminated, in which he had worked full week. Appellee has not given any example that one's unemployment benefits was appealed by appellee. In Ryland 26 years history, in over 30,000 Ryland employees, appellee can NOT find any one who received similar treatments.

VI. THE REPLACEMENT OF APPELLANT WAS A PROGRAMMER ANALYST

After appellant was terminated appellee hired a white employee, Jeff Lochte from temporary full time to part-time. Jeff Lochte was a college intern and had comparable but much poorer qualifications. Douglas Townsend testified that Jeff Lochte "was a computer type guy". All that Dr. Arlene Malech could remember what Jeff Lochte did was same type of work as appellant's Programmer Analyst. Dr. Arlene Malech testified that, when hiring Jeff Lochte, she was looking for his SAS experience. Jeff Lochte's main responsibilities was "data processing support", and SAS responsibilities. He also made some "frequency and cross tabs". All the project types Jeff Lochte did met appellant's Programmer Analyst Support Marketing Research job description, part **II. A**. This also proves that appellant's original job was not closed at least until September 1993.

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VII. APPELLANT HAS PRESENTED SUFFICIENT EVIDENCE OF

TITLE VII VIOLATION

Appellee agrees that appellant can establish a Title VII violation by using the scheme in either Clay, 955 F.2d case or McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) case. Appellant has provided sufficient evidences which satisfy both cases.

A. Appellant Has Presented Sufficient Direct Evidences Of Discrimination

Using the scheme in Clay, 955 F.2d case, appellant has presented sufficient direct evidence of discrimination. As fully proven in part **V**, appellant received complete different treatments while worked in Ryland. On his arriving Marketing Group, his welcoming memo was canceled while all other people there got welcoming memo. He was forced to report to a bad manager. He was constantly screamed by Dr. Malech. He was insulted in public. He was imposed unrealistic deadline. He was alleged that he did poor performance and was not given any chance to explain those allegations. He was force to leave in fifteen minutes and was escorted out of the office. He was not placed in a probation. He was not given any severance pay even was not given the salary for Saturday and Sunday in the week he was terminated, which were none working days and he had worked full week. Further more, after he applied unemployment benefits, appellee appealed his benefits in order to create more difficulties in his life. In appellant's Opposition to Appellee's Summary Judgment, he had given numerous examples of the different treatments received by all other non-Asian employees including those who were terminated for cause. They are all direct evidences of discriminations.

B. Appellant Has Established All Necessary Elements For a Prima Facie Case

Using the scheme in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973) case, appellant has established all necessary elements for a prima facie case:

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1. Appellant is a member of protected class.

2. Appellant was discharged.

3. Appellant has fully proven that he was performing his job at a level that met his employer's legitimate expectation. He got excellent appraisal in his 3 month review. His job had not any change after reporting to Dr. Arlene Malech, part **II**. He did not make any mistake after reporting to Dr. Arlene Malech, part **III**. Appellant has proven that all the reasons provided by appellee are totally unworthy of credence. Rather they were pretext for discrimination, part **III**.

4. Appellant was replaced by a college intern outside the protected class who had comparable but much poorer qualifications, part **VI**.

VIII. CONCLUSION

All the facts in this Petition has been presented in appellant's Informal Brief. The court can easily verify those facts by reviewing the records in file. It is undisputed that the district court of Maryland incorrectly decided ALL the material facts. It granted appellee's Summary Judgments with all the wrong reasons and applied wrong law. Appellee is also unable to refute any single fact presented. All the reasons given by the district court are reversible errors and was overlooked in the circuit court decision. There is NOT any reason that district court decision should be affirmed. This case is not simply some unfair treatments against appellant. Rather it is serious discrimination with serious defamation. Appellee has caused great damages in appellant's life, part **IV. A**, appellant's Reply. All the major witnesses have engaged illegal activities. It is unjustified that there is NO even any hearing been made either in Ryland, OHR, EEOC, or district court, MD, for the whole course of this case.

Although appellant is pro se, it does not mean appellant is not serious with his claim. Rather, he has exhausted his financial resources and hired two attorneys. He keeps working in this case regardless facing repeatedly threatening from appellee, part **IV. B**, appellant's Reply. Life can be taken but justice can NOT be sullied. Appellant strongly urge the forth Circuit Court to make serious

consideration of this case with all the evidences presented for all the people who suffered from discriminatory treatments, for the dignity of the law, and for the well-being of the country.

Appellant, THEREFORE, respectfully requests rehearing in Banc.

Respectfully Submitted,

s/ Yiqun(Alex) Guo
Yiqun(Alex) Guo
343 West Side Dr. #203
Gaithersburg, MD 20878-3033
Appellant/plaintiff - pro se

APPENDIX I. -- Petitioner's Affidavit to the U.S. District Court, Maryland
Filed January 22, 1996

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Case No. JFM-95-1319

YIQUN GUO,
Plaintiff,
v.
RYLAND GROUP, INC.
Defendant.

AFFIDAVIT OF YIQUN GUO

I, Yiqun Guo, hereby depose and say:

1. I am a resident of Montgomery County, Maryland, and I am over the age of eighteen.

2. I am the plaintiff in the above-captioned matter.

3. I am submitting this affidavit as part of my opposition to defendant's motion for summary judgment.

4. On September 21, 1992, Ryland hired me Programmer Analyst to support marketing research.

5. Harvey Singer, George Tresnak, Terry Rose and Bill Ballweber interviewed me for the position.

6. As a Programmer Analyst I was responsible for statistical analysis and marketing research, including customer satisfaction surveys.

7. I received excellent appraisals and a $3000 raise in February 1993.

8. On May 10, 1993, Doug Townsend told me that my position as a Programmer Analyst was closed and that I would be reporting to Arlene Malech.

9. I told Doug Townsend that I was unhappy with this decision because Arlene Malech does not like me.

10. Even though I was uncomfortable working for Arlene Malech, I believed that it was my only choice if I wanted to remain at Ryland.

11. In my position as the Customer_Satisfaction Research Analyst ("CSRA"), I performed substantially the same duties as I performed as a Programmer Analyst.

12. When I had been in the CSRA position for only three weeks, after many confrontation with Arlene Malech, Ryland suddenly fired me.

13. On June 4, 1993, Townsend presented me a memo entitled "job Performance". Townsend then escorted me from the premises, an act that was humiliating for me.

I hereby certify under the penalties of perjury that the contents of the foregoing affidavit are true and correct to the best of my personal knowledge, information and belief.

s/ YIQUN GUO
YIQUN GUO

Dated: January 18th, 1996